



United States General Accounting Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Integrity Management Services, Inc.

File: B-283094.2

Date: May 3, 2000

Katherine S. Nucci, Esq., Adduci, Mastriani & Schaumberg, for the protester. Maj. Howard W. Roth, III, Department of the Army; and Laura J. Mann, Esq., Small Business Administration, for the agencies. Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office will not consider protest that Small Business Administration (SBA) failed to consider vital information bearing on awardee's responsibility in issuing it a certificate of competency where the allegedly vital information does not concern awardee's compliance with a definitive responsibility criterion.
2. Contracting officer reasonably determined that awardee's pricing demonstrated an understanding of the solicitation's requirements and supported its proposed approach based on comparison of awardee's proposed staffing and overall price to government estimates.

DECISION

Integrity Management Services, Inc. protests the award of a contract to PCT Services, Inc. under request for proposals (RFP) No. DABT57-98-R-0050, issued by the Department of the Army for hospital housekeeping services for various medical facilities located at Forts Eustis, Lee, Monroe and Story in Virginia. The contract was awarded to PCT after the Small Business Administration (SBA) issued it a certificate of competency (COC). The protester contends that in issuing the COC the SBA failed to consider vital information bearing on PCT's responsibility. The protester also argues that the agency failed to conduct an adequate price realism analysis.

We deny the protest.

The RFP, which was set aside for small, minority-owned businesses participating in the SBA's competitive 8(a) program, contemplated the award of a fixed-price contract for a base and 4 option years to the responsible offeror submitting the lowest-priced, technically acceptable offer. One of the factors to be considered in the technical evaluation of proposals was the offeror's relevant experience and past performance.¹ The solicitation advised that in the event that an offeror's past performance were determined unacceptable, the matter would be referred to the SBA for a determination regarding issuance of a COC. RFP § M.3.a.4. The RFP also provided for a price analysis to determine if the offeror's pricing reflected an understanding of the scope of the work and supported the proposed method of performance. RFP § M.3.b.

Eleven proposals were received by the April 13, 1999 closing date. W.D. Enterprises, Inc.'s offer was lowest in price, while PCT's and Integrity's were second and fifth low, respectively. The contracting officer determined that W.D. Enterprises was nonresponsible and referred the matter to the SBA for possible issuance of a COC. The SBA declined to issue a COC, whereupon the agency conducted a technical evaluation and price analysis of PCT's proposal. The contracting officer determined that PCT's proposal showed that it understood the scope of the effort and that its price was realistic. Agency Report at 6. She further determined that PCT was nonresponsible, however, and accordingly referred the matter to the SBA. In her Determination of Contractor Responsibility, the contracting officer noted that she had found PCT nonresponsible based on certain adverse past performance information furnished by its references.

After reviewing the contracting officer's determination, the past performance questionnaires furnished by the references, and PCT's COC application, the SBA industrial specialist concluded that "most [of the problems described in the questionnaires] were minor, or attributable to the financial instability PCT previously encountered." Summary of COC Review at 1. Both the industrial specialist and SBA's financial specialist, who had reviewed PCT's financial situation, recommended issuance of a COC. The COC was issued on December 8, and the Army awarded PCT a contract on January 21, 2000.

Integrity protests the award to PCT,² arguing that the SBA failed to consider vital information bearing on that firm's responsibility in issuing it a COC. In this regard,

¹ Other technical evaluation factors were: (1) comprehension and demonstrated ability to provide necessary management, equipment, and personnel necessary for successful performance; (2) organization and staffing; and (3) quality control. RFP, § M.3.a.1-3.

² In its protest, Integrity also challenged the eligibility for award of the third and fourth lowest-priced offerors, arguing that the former was ineligible because it had graduated from the 8(a) program the day before initial proposals in response to this
(continued...)

the protester contends that the Army failed to bring to the SBA's attention two recent decisions by our Office, PCT Servs., Inc., B-279168, May 12, 1998, 98-1 CPD ¶ 152, and PCT Servs., Inc., B-281046, B-281012.2, Dec. 22, 1998, 99-1 CPD ¶ 10, which discuss ratings made in 1997 and 1998 of PCT's performance on many of the same contracts considered by the SBA in evaluating PCT's eligibility for a COC here. The protester contends that the questionnaires concerning PCT's performance that were completed by references in 1997-1998 are more negative than the questionnaires completed in 1999 in connection with this procurement, and that the SBA would not have determined PCT responsible if it had considered both sets of questionnaires.

Our Office will review the SBA's determinations regarding the issuance of, or failure to issue, a COC, only where there is a showing of possible bad faith on the part of government officials or a failure to consider vital information bearing on the firm's responsibility. 4 C.F.R. § 21.5(b)(2). Where, as here, one offeror protests the issuance of a COC to a competitor on the ground that the SBA failed to consider "vital information," we will consider the protest only where the solicitation contains definitive responsibility criteria and the issue raised concerns the competitor's compliance with those criteria.³ Eastern Marine, Inc., B-212444.2, Aug. 28, 1984, 84-2

(...continued)

RFP were due, and that the latter was ineligible because it did not satisfy the RFP's definitive responsibility criteria. In its report on the protest, the Army did not address Integrity's challenges to the intervening offerors. Because Integrity has challenged the eligibility for award of all offerors in line for award ahead of it, and in light of the agency's failure to dispute those challenges, we will treat Integrity as an interested party to challenge the award to PCT. See 4 C.F.R. § 21.0(a) (2000); Tri-Star Indus., Inc.-Recon., B-254767.3, June 28, 1994, 94-1 CPD ¶ 388 at 2.

³ The protester contends that "vital information bearing on the firm's responsibility" should be construed more broadly in the context of third party protests. In modifying our regulations to add this language in 1995, however, we explained that we were making the change to reflect our then-current case law. 60 Fed. Reg. 40,737, 40,739 (1995). Our then-current case law consisted of two strands, one governing protests brought by firms that had applied for and been denied COCs, see, e.g., COSTAR, B-240980, Dec. 20, 1990, 90-2 CPD ¶ 509; American Indus. Contractors, Inc., B-236410.2, Dec. 15, 1989, 89-2 CPD ¶ 557, and the other governing protests against the issuance of a COC brought by third parties. See Eastern Marine, Inc., supra; Surgical Instr. Co. of Am., supra; Uniflite, Inc., supra. The line of cases dealing with third party protests limited our review of decisions by SBA to issue a COC to situations in which there was a showing of possible fraud on the part of government officials or the record indicated that the SBA had not considered vital information bearing on a small business concern's compliance with definitive responsibility criteria contained in the solicitation.

CPD ¶ 232 at 4; Surgical Instrument Co. of Am., B-212653, Nov. 30, 1983, 83-2 CPD ¶ 628 at 2; Uniflite, Inc., B-197365, Jan. 23, 1980, 80-1 CPD ¶ 67 at 2. Here, since neither bad faith nor a failure to comply with a definitive responsibility criterion has been alleged, we will not consider the matter.

Integrity next argues that the agency failed to conduct an adequate price realism analysis pursuant to § M.3.b of the RFP, which provides as follows:

The Government will perform a price analysis of [an] offeror's proposal as part of the evaluation to determine if the offeror understands the scope of the requirement. As part of this price analysis, the Government will assess whether the offeror's proposed pricing supports the proposed method of performance and is realistic. A price found to be unrealistically low in relation to the proposed work may be rejected on the basis such price evidences a lack of understanding of the requirement.

The protester contends that the agency should have reviewed the realism of PCT's proposed costs for supplies and equipment and its site manager's salary in conducting its price analysis.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. However, an agency may provide for price realism analysis in the solicitation of fixed-price proposals for such purposes as measuring an offeror's understanding of the solicitation requirements, The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 4, or to avoid the risk of poor performance from a contractor who is forced to provide services at little or no profit. Ameriko, Inc., B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Volmar Constr., Inc., B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 6.

In order to determine whether PCT's price demonstrated an understanding of the scope of the requirement and supported the proposed method of performance, the contracting officer compared it to the government estimate and examined PCT's proposed level of staffing. The contracting officer found that PCT's proposed number of labor hours (which translated to [deleted] full time equivalents (FTE)) was only [deleted] percent lower than the government estimate of 31.4 FTEs and less than [deleted] percent lower than the protester's and the incumbent contractors' FTEs ([deleted] and [deleted], respectively). The contracting officer concluded that this relatively small difference in the level of proposed staffing demonstrated that PCT understood the scope of the requirement. Contracting Officer's Statement at 3-4. The contracting officer further concluded that although PCT's proposed price of

\$4,311,850.80 was 22 percent lower than the government estimate of \$5,556,362.00, it was nonetheless realistic because the discrepancy was largely attributable to overstatement of the government estimate. Memorandum Regarding Price Analysis of PCT Proposal, Jan. 5, 2000, at 1. Given that the contracting officer examined both the adequacy of PCT's proposed approach to performing the work and the adequacy of its pricing to support its proposed approach, we see no basis to question the sufficiency of her price analysis.

The protester also argues that the agency should have reviewed the realism of PCT's proposed costs for supplies and equipment and its site manager's salary in conducting its price analysis. As noted above, the depth of a price analysis is a matter committed to the agency's discretion, and the fact that the agency did not examine certain elements proposed by Integrity provides no basis to question the otherwise reasonable price analysis here. See Tecom, Inc., B-275518.2, May 21, 1997, 97-1 CPD ¶ 221 at 6.

The protest is denied.

Comptroller General
of the United States